

From: [ANDERSON Jim M](#)
To: [Lori Cora/R10/USEPA/US@EPA](#)
Cc: [Chip Humphrey/R10/USEPA/US@EPA](#); [Deb Yamamoto/R10/USEPA/US@EPA](#); [Eric Blischke/R10/USEPA/US@EPA](#); [BURKHOLDER Kurt](#)
Subject: RE: LWG ARARs list discussion
Date: 02/09/2010 05:02 PM

Lori,
Your suggested changes look OK to me.
Jim

-----Original Message-----

From: Cora.Lori@epamail.epa.gov [mailto:Cora.Lori@epamail.epa.gov]
Sent: Tuesday, February 09, 2010 4:52 PM
To: ANDERSON Jim M
Cc: Humphrey.Chip@epamail.epa.gov; Yamamoto.Deb@epamail.epa.gov; Blischke.Eric@epamail.epa.gov; BURKHOLDER Kurt
Subject: RE: LWG ARARs list discussion

Hi, Jim. I looked over the answers. They all look fine except the RCRA answer which I believe needs to be more clear that the permit exemption issue is the State's position not EPA's. EPA views that as long as the cleanup meets the substantive requirements of Section 404, that the RCRA exemption would still apply. I propose to make the following change

Page 6, Hazardous Waste and Materials II

EPA discussed with DEQ the LWG's requested clarification that state RCRA rules are not applicable to in-water disposal. The LWG is correct in its previous submissions that dredged material may be subject to hazardous waste requirements if the material contains a listed waste or displays a hazardous waste characteristic, and that Oregon has adopted the federal RCRA regulations by reference. See OAR 340-100-0002(1). This includes the hazardous waste exclusion of dredged material under 40 CFR 261.4(g). The exclusion reads: "Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act ... is not a hazardous waste... The term permit means a permit issued by the U.S. Corps of Engineers..." DEQ believes that since the on-site portions of the Portland Harbor remedy will be exempt from federal permitting, including Corps 404 permits, that DEQ cannot categorically conclude that disposal of dredged material will be "subject to the requirements of a [Corps-issued] permit" and thus excluded from state RCRA requirements. Further, whether the state RCRA rules contain action-specific requirements will also depend on the specific proposed remedy and stringency. See, e.g., Terminal 4 Action Memorandum (May 11, 2006), Response to Comment Golder-1.

Let me know if you are ok with this change. Thanks.

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